

ATTACHMENT 18

Debates and Other Proceedings of the Convention of Virginia,
302 (2d ed., 1805)

DEBATES

AND

OTHER PROCEEDINGS

OF THE

Convention of Virginia,

CONVENED AT RICHMOND, ON MONDAY THE SECOND, DAY OF JUNE,
1788, FOR THE PURPOSE OF DELIBERATING ON THE CON-
STITUTION RECOMMENDED BY THE GRAND
FEDERAL CONVENTION.

TO WHICH IS PREFIXED

THE FEDERAL CONSTITUTION.

TAKEN IN SHORT HAND,
BY DAVID ROBERTSON.....OF PETERSBURG.

SECOND EDITION.

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1805.

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the states on application of the legislature or executive; and the eighth section, of the first article, gives congress power, to call forth the militia to quell insurrections: There cannot therefore be a concurrent power. The state legislatures ought to have power to call forth the efforts of militia when necessary. Occasions for calling them out may be urgent, pressing, and instantaneous. The states cannot now call them, let an insurrection be ever so perilous, without an application to congress. So long a delay may be fatal.

There are three clauses which prove beyond the possibility of doubt, that congress, and *congress only*, can call forth the militia. The clause giving congress power to call them out to suppress insurrections, &c.—that which restrains a state from engaging in war, except when actually invaded,—and that which requires congress to protect the states against domestic violence, render it impossible, that a state can have power to intermeddle with them. Will not congress find refuge for their actions in these clauses? With respect to the concurrent jurisdiction, it is a political monster of absurdity. We have passed that clause which gives congress an unlimited authority over the national wealth; and here is an unbounded controul over the national strength. Notwithstanding this clear and unequivocal relinquishment of the power of controuling the militia, you say the states retain it for the very purposes given to congress. Is it fair to say, that you gave the power of arming the militia, and at the same time say you reserve it? This great national government ought not to be left in this condition. If it be, it will terminate in the destruction of our liberties.

Mr. *Madison*.—Mr. Chairman—Let me ask this committee, and the honorable member last up, what we are to understand from this reasoning? The power must be vested in congress, or in the state governments; or there must be a division or concurrence. He is against division—it is a political monster. He will not give it to congress for fear of oppression. Is it to be vested in the state governments? If so, where is the provision for general defence? If ever America should be attacked, the states would fall successively. It will prevent them from giving aid to their sister states. For, as each state will expect to be attacked, and wish to guard against it, each will retain its own militia for its own defence. Where is this power to be deposited then, unless in the general government, if it be dangerous to the public safety to give it exclusively to the states? If it must be divided, let him shew a better manner of doing it than that which is in the constitution. I cannot agree with the other honorable gentleman, that there is no check. There is a powerful check in that paper. The state governments are to govern the militia, when not called forth for general national purposes; and congress is to govern such part only as may be in the actual service of the union. Nothing can be more certain and positive than this. It expressly empowers congress to govern them when in the service of the United States. It is then clear, that the states govern them when they are not. With respect to suppressing insurrections, I say that those clauses which were mentioned by the honorable gentleman, are compatible with a concurrence of the power. By the first, congress is to call them forth to suppress insurrections and repel invasions of foreign powers. A concurrence in the

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former case is necessary, because a whole state may be in insurrection against the union. What has passed will perhaps justify this apprehension. The safety of the union, and particular states, requires that the general government should have power to repel foreign invasions. —The fourth section, of the fourth article, is perfectly consistent with the exercise of the power by the states. The words are, "The United States shall guarantee to every state in this union, a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive, (when the legislature cannot be convened) against domestic violence." —The word *invasion* here, after power had been given in the former clause to repel *invasions*, may be thought tautologous, but it has a different meaning from the other. This clause speaks of a particular state. It means that it shall be protected from invasion by other states. A republican government is to be guaranteed to each state, and they are to be protected from invasion from other states, as well as from foreign powers: And on application by the legislature or executive, as the case may be, the militia of other states are to be called to suppress domestic insurrections. Does this bar the states from calling forth their own militia? No—but it gives them a supplementary security to suppress insurrections and domestic violence. The other clause runs in these words, "No state shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay." They are restrained from making war, unless invaded, or in imminent danger.—When in such danger, they are not restrained. I can perceive no competition in these clauses. They cannot be said to be repugnant to a concurrence of the power. If we object to the constitution in this manner, and consume our time in verbal criticism, we shall never put an end to the business.

Mr. George Mason.—Mr. Chairman—A worthy member has asked, who are the militia, if they be not the *people*, of this country, and if we are not to be protected from the fate of the Germans, Prussians, &c. by our representation? I ask who are the militia? They consist now of the whole people, except a few public officers. But I cannot say who will be the militia of the future day. If that paper on the table gets no alteration, the militia of the future day may not consist of all classes, high and low, and rich and poor; but may be confined to the lower and middle classes of the people, granting exclusion to the higher classes of the people. If we should ever see that day, the most ignominious punishments and heavy fines may be expected. Under the present government all ranks of people are subject to militia duty. Under such a full and equal representation as ours, there can be no ignominious punishments inflicted. But under this national, or rather consolidated government, the case will be different. The representation being so small, and inadequate, they will have no fellow-feeling for the people. They may discriminate people in their own predicament, and exempt from militia duty all the officers and lowest creatures of the national government. If there were a more particular definition of their powers, and a clause exempting the militia from martial

law, except when in actual service, and from fines and punishments of an unusual nature, then we might expect that the militia would be what they are. But if this be not the case, we cannot say how long all classes of people will be included in the militia. There will not be the same reason to expect it, because the government will be administered by different people. We know what they are now, but know not how soon they may be altered.

Mr. George Nicholas.—Mr. Chairman—I feel apprehensions lest the subject of our debates should be misunderstood. Every one wishes to know the true meaning of the system:—But I fear those who hear us will think we are captiously quibbling on words. We have been told in the course of this business, that the government will operate like a screw. Give me leave to say, that the exertions of the opposition are like that instrument. They catch at every thing, and take it into their vortex. The worthy member says, that this government is defective because it comes from the people. Its greatest recommendation with me is putting the power in the hands of the people. He disapproves of it, because it does not say in what particular instances the militia shall be called out to execute the laws. This is a power of the constitution, and particular instances must be defined by the legislature. But, says the worthy member, those laws which have been read, are arguments against the constitution, because they shew that the states are now in possession of the power, and competent to its execution. Would you leave this power in the states, and by that means deprive the general government of a power which will be necessary for its existence? If the state governments find this power necessary, ought not the general government to have a similar power? But, sir, there is no state check in this business. The gentleman near me has shewn that there is a very important check.

Another worthy member says, there is no power in the states to quell an insurrection of slaves. Have they it now? If they have, does the constitution take it away? If it does, it must be in one of the three clauses which have been mentioned by the worthy member. The first clause gives the general government power to call them out when necessary. Does this take it away from the states? No—but it gives an additional security: For, besides the power in the state governments to use their own militia, it will be the duty of the general government to aid them with the strength of the union when called for. No part of this constitution can shew that this power is taken away.

But an argument is drawn from that clause, which says, that "No state shall engage in war unless actually invaded, or in such imminent danger as will not admit of delay." What does this prohibition amount to? It must be war with a foreign enemy, that the states are prohibited from making: For the exception to the restriction proves it.—The restriction includes only offensive hostility, as they are at liberty to engage in war when invaded, or in imminent danger. They are therefore not restrained from quelling domestic insurrections, which are totally different from making war with a foreign power. But the great thing to be dreaded, is, that during an insurrection, the militia will be called out from the state. This is his kind of argument. Is it to be said that at such a time the general government would order the militia to